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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,419	12/11/2003	John T. Moore	MI22-2463	4614
21567	7590	05/09/2005		
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201				EXAMINER WARREN, MATTHEW E
				ART UNIT 2815 PAPER NUMBER

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/734,419	MOORE ET AL.
	Examiner Matthew E. Warren	Art Unit 2815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 February 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 34,36-38 and 40-44 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 34,36-38,40-44 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the Amendment filed on February 23, 2005.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 34 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,693,345 B2. Although the conflicting claims are not identical, they are not patentably distinct from

each other because U.S. Patent No. 6,693,345 B2 claims all of the same limitations of the instant invention except the silicon nitride material specifically comprising Si_3N_4 . However, it would have been obvious to one of ordinary skill in the art to use Si_3N_4 since it is a well known form of silicon nitride.

In re claims 36 and 37, although US Patent No. 6,693,345 B2 does not show the specific barrier composition of $\text{Si}_x\text{N}_y\text{O}_z$ or the barrier thickness less than or equal to 5 nm, It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the barrier having a specific composition and thickness, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 38 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of U.S. Patent No. 6,693,345 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6,693,345 B2 claims all of the same limitations of the instant invention except the semiconductive substrate specifically comprising monocrystalline silicon. However, it would have been obvious to one of ordinary skill in the art to use monocrystalline silicon since it is a well known substrate material.

In re claims 40-42, although US Patent No. 6,693,345 B2 does not show the specific first or second portion thickness or the second ratio of silicon to nitrogen, It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the portions having a specific thickness or silicon to nitrogen ratio, since it

has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In re claims 43 and 44, US Patent No. 6,693,345 B2 shows all of the elements of the claims except the specified compositions of silicon nitride. However, it would have been obvious to one of ordinary skill in the art to use the specified compositions of silicon nitride since they are well known forms of silicon nitride

Claims 34 and 37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 and 7 of U.S. Patent No. 6,417,559 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6,417,559 B1 claims all of the same limitations of the instant invention except the silicon nitride material specifically comprising Si_3N_4 . However, it would have been obvious to one of ordinary skill in the art to use Si_3N_4 since it is a well known form of silicon nitride. However, it would have been obvious to one of ordinary skill in the art to use the desired compositions of silicon nitride since they are well known forms.

Allowable Subject Matter

Claims 45-47 are allowed.

The following is an examiner's statement of reasons for allowance: the prior art references, alone or in combination, do not show a semiconductor wafer comprising: a composite layer over and contacting a silicon oxide layer, the composite layer having a

Art Unit: 2815

thickness, a first portion of the thickness comprising a first silicon nitride material having a first refractive index and a second portion of the thickness comprising a second silicon nitride material having a second refractive index which is greater than the first refractive index, and a photoresist over the composite layer.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Warren whose telephone number is (571) 272-1737. The examiner can normally be reached on Mon-Thur and alternating Fri 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (571) 272-1664. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2815

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MEW
MEW
May 3, 2005

Tom Thomas
TOM THOMAS
SUPERVISORY PATENT EXAMINER